

Message Text

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ORIGIN EB-07

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EUR/CE: JHURLEY
CAB:JRCHESSEN
EB/AN:RABROWN
L/EB:PMICKEY

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FM SECSTATE WASHDC
TO AMEMBASSY BERN
INFO AMEMBASSY BONN
AMEMBASSY LONDON
AMEMBASSY PARIS

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E.O. 11652: N/A

TAGS: EAIR

SUBJECT: CIVAIR: RENEWAL OF MEMORANDUM OF UNDERSTANDING
ON CHARTERS

REF: BERN 2518

1. SUMMARY. COPY OF SWISS DRAFT PROPOSAL FOR RENEWAL MOU
RECEIVED WASHINGTON JUNE 6 AND REVIEWED. DEPARTMENT AND
CAB PLEASED THAT INFORMAL DISCUSSIONS IN BERN IN MARCH WITH
STURZENEGGER AND IN MONTREAL IN APRIL WITH FREI HAVE NOW
RESULTED IN SWISS ACCEPTANCE OF U.S. ABC CHARTER "EUROPEAN"
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CONDITIONS MAKING RENEWAL OF UNDERSTANDING POSSIBLE. SUB-
JECT TO SWISS AIR OFFICE CONCURRENCE IN LIMITED NUMBER
TECHNICAL CHANGES EXPLAINED PARAGRAPHS 2 THRU 10 BELOW
EMBASSY MAY EXCHANGE LETTERS PUTTING MOU INTO IMMEDIATE
EFFECT PER PARA 10 BELOW.

2. LETTER FROM GULDIMANN WHICH WILL INITIATE EXCHANGE

AND CONSTITUTE SWISS HALF OF EXCHANGE SHOULD BE ADDRESSED TO AMBASSADOR (NOT STYLES AS IN SWISS DRAFT LETTER) WHO WOULD SIGN U.S. REPLY LETTER.

3. IN OPENING SENTENCE OF SWISS DRAFT "DISCUSSIONS" OR (LESS PREFERABLY) "INFORMAL DISCUSSIONS" SHOULD BE SUBSTITUTED FOR "CORRESPONDENCE EXCHANGED." REASON IS THAT IN THE UNITED STATES AT LEAST THIS LETTER WILL BECOME A PUBLIC DOCUMENT AND WOULD MOST LIKELY PRODUCE SOME REQUESTS FOR COPIES OF "CORRESPONDENCE EXCHANGED." PARTIES MAKING REQUESTS WOULD MOST LIKELY NOT ACCEPT FACT THAT KUNZI TO CHESN LETTER OF JUNE 1 WAS ONLY "CORRESPONDENCE EXCHANGED" (EMBASSY'S RESPONSE TO AIR OFFICE BASED ON THIS TELEGRAM WILL IN EFFECT CONSTITUTE REPLY TO KUNZI LETTER). DEPARTMENT HAS ADDITIONAL LEGAL PROBLEM THAT ANY EXECUTIVE AGREEMENT SHOULD NOT MAKE REFERENCE TO UNIDENTIFIED CORRESPONDENCE NOT A PART THEREOF SINCE THIS COULD IMPLY SOME CONFIDENTIAL UNDERSTANDING WAS ALSO REACHED. IF SWISS OBJECT TO MENTIONING "DISCUSSIONS" OR EVEN "INFORMAL DISCUSSIONS" BECAUSE OF AN UNFULFILLED OBLIGATION TO REPORT EVEN THESE TO ECAC, EMBASSY SHOULD SUGGEST A NEUTRAL FORMULATION: "THE FEDERAL AIR OFFICE PROPOSES THE FOLLOWING UNDERSTANDING (CAPITAL U) REGARDING THE RULES TO BE APPLIED TO PASSENGER AIR CHARTER TRAFFIC BETWEEN SWITZERLAND AND THE UNITED STATES."

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4. DEPARTMENT RECOGNIZES THAT THE SENTENCE (BEGINNING WITH "FURTHERMORE") PROPOSED BY SWITZERLAND TO BE ADDED TO FOOTNOTE 1 ACCURATELY REFLECTS A FACTUAL SITUATION IN WHICH DEPARTMENT AND CAB FULLY CONCUR. NEVERTHELESS EMBASSY SHOULD PRESS FOR SENTENCE'S COMPLETE DELETION CITING REASONS IN FIRST TWO SUBPARAGRAPHS BELOW:

A. THE 45 DAYS MINIMUM PREBOOKING PERIOD AND 7 DAYS MINIMUM DURATION FOR ABC FLIGHTS ARE, FOR ORIGINATIONS IN UNITED STATES, ALREADY SO SPECIFIED IN CAB SPECIAL REGULATIONS AND GOVERNED BY PARAGRAPH C OF SWISS LETTER WHICH REFERS TO SUCH REGULATIONS. FOR ORIGINATIONS IN SWITZERLAND THEY ARE SO SPECIFIED IN PARAGRAPHS ONE AND SIX ON PAGE ONE OF ANNEX. THE VERY REDUNDANCY OF THE PROPOSED ADDITIONAL SENTENCE WOULD BRING INTO QUESTION ITS MEANING AND INTENT. DEPARTMENT DESIRES THAT UNDERSTANDING BE AS CLEAR AS POSSIBLE.

B. THE FIRST TWO SENTENCES OF FOOTNOTE ONE TO PARAGRAPH A.2. ARE IN EFFECT UNILATERAL RESERVATIONS BY SWITZERLAND ON THE COUNTRY OF ORIGIN PRINCIPLE EXPRESSED IN A.1. THEY WERE DELIBERATELY PUT INTO A.2. WHEN THIS WAS NEGO-

TIATED IN 1975 IN ATTEMPT TO CHARACTERIZE DEVIATIONS FROM THIS PRINCIPLE WHICH U.S. HAD TO ACCEPT AS DEVIATIONS FROM THE ENFORCEMENT PRINCIPLE INSTEAD. PROPOSED NEW THIRD SENTENCE IS OF AN ENTIRELY DIFFERENT CHARACTER FROM FIRST TWO IN THAT IT WOULD CONSTITUTE NOT SWISS RESERVATIONS BUT BILATERALLY AGREED CHARTERWORTHINESS CONDITIONS, WHICH CONDITIONS BELONG SOLELY IN EACH GOVERNMENT'S RULES IN KEEPING WITH PARAGRAPH A.1.

C. BEGIN FYI. PROPOSED NEW SENTENCE IS OUT OF CHARACTER IN YET ANOTHER WAY BECAUSE FIRST TWO SENTENCES APPLY ONLY TO "SERIES OF FLIGHTS" AND PROPOSED ADDED SENTENCE WOULD NOT. EMBASSY SHOULD NOT RAISE THIS HOWEVER AS SENTENCE WOULD REMAIN UNACCEPTABLE EVEN WITH "SERIES OF FLIGHTS" LIMITED OFFICIAL USE

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ADDED. SUSPICION HERE IS THAT SWISS AIR AUTHORITIES, WHO WANT TO KEEP GOOD RELATIONS WITH BOTH U.S. AND ECAC, WANT TO AVOID OR MINIMIZE VISIBLE CONSULTATIONS WITH U.S. ON CHARTERS AS THEY HAVE IN THE PAST. THUS THEY HAVE PROPOSED AUTOMATIC ONE-YEAR EXTENSION IF NEITHER PARTY DESIRES TERMINATION (PARAGRAPH E.1.) .YET THEY ARE PROBABLY AWARE THAT THE ABC 45 DAY PREBOOKING PERIOD WILL AUTOMATICALLY DROP TO 30 DAYS ON OCTOBER 1, 1978, UNLESS A CAB REEXAMINATION TO BE BEGUN AT ALMOST SAME TIME AS SWISS WOULD HAVE TO DECLARE TERMINATION, I.E., JAN. 1, 1978, DETERMINES OTHERWISE. IF CAB DOES NOT REPEAL ITS AUTOMATIC DROP TO 30 DAYS, AND SWISS HAVE NOT TERMINATED UNDERSTANDING, SWISS COULD BE IN UNENVIABLE POSITION VIS-A-VIS ECAC OF BEING COMMITTED TO ACCEPT 30-DAY U.S. ORIGIN ABCS IN FACE OF PROBABLE SUBSTANTIAL ECAC OPPOSITION, UNLESS SWISS-DESIRED SENTENCE WERE ADDED NOW. THIS IS BECAUSE THE DROP TO 30 DAYS WOULD NOT BE A "MODIFICATION" WHICH SWISS COULD CHALLENGE UNDER PARAGRAPH A.4. BY SAME TOKEN, IF U.S. WERE TO AGREE TO SENTENCE'S INCLUSION, IT WOULD FACE CHOICE BEFORE DECEMBER 31, 1977 OF EITHER PREDETERMINING THAT ABC PREBOOKING TO SWITZERLAND FROM OCTOBER 31, 1978 TO MARCH 31, 1979 WOULD BE 45 DAYS, CAB RULES NOTWITHSTANDING, OR OF TERMINATING THE AGREEMENT. OBVIOUSLY WE WOULD LIKE TO BE IN POSITION OF HAVING 30 DAY RULE ACCEPTED, EVEN IF ONLY FOR OCTOBER 31, 1978 TO MARCH 31, 1979, IF CAB DECIDES NOT TO REPEAL OR MODIFY THE AUTOMATIC DROP TO 30 DAYS. ACCORDINGLY, EMBASSY SHOULD MAKE CASE FOR DELETION BASED ON SUBPARAGRAPHS A AND B ABOVE AND IF THAT DOES NOT WORK SMOKE OUT REASON FOR SWISS INSISTENCE AND REPORT TO WASHINGTON. END FYI.

5. RE PARAGRAPH E.1., IT WOULD BE PREFERABLE TO HAVE UNDERSTANDING AUTOMATICALLY RENEWABLE ON ANNUAL BASIS. LIMITED OFFICIAL USE

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IF SWISS AGREE, EMBASSY SHOULD PROPOSE NEW SECOND SENTENCE
IN E.1. TO READ:

"THIS UNDERSTANDING SHALL CONTINUE IN EFFECT FOR ONE YEAR
PERIODS THEREAFTER UNLESS BY 90 DAYS PRIOR TO AN EXPIRA-
TION DATE EITHER PARTY HAS GIVEN WRITTEN NOTICE TO THE
OTHER PARTY OF ITS DESIRE TO ALLOW THE UNDERSTANDING TO
EXPIRE."

IF HOWEVER, SWISS PREFER 9 MONTH UNDERSTANDING WITH ONLY
ONE AUTOMATIC EXTENSION, SUBSTANCE OF THEIR SECOND

SENTENCE IN E.1. IS ACCEPTABLE, HOWEVER EMBASSY SHOULD
SUGGEST MINOR CLARIFYING CHANGES IN SENTENCE STRUCTURE TO
READ:

"IF BY DECEMBER 31, 1977 NEITHER PARTY TO THE UNDER-
STANDING HAS GIVEN WRITTEN NOTICE TO THE OTHER PARTY OF
ITS DESIRE TO ALLOW THE UNDERSTANDING TO TERMINATE, ITS
PERIOD OF EFFECTIVENESS SHALL EXTEND UNTIL MARCH 31, 1979."

6. NEW FORMULATION OF CONSULTATION SENTENCE (NOW E.2)
ACCEPTABLE.

7. DEPARTMENT WOULD LIKE NEW PARAGRAPH E.3. ADDED TO
READ:

"THIS UNDERSTANDING SHALL SUPERCEDE THE EXCHANGE OF
LETTERS DATED NOVEMBER 20, 1975 AND NOVEMBER 24, 1975 ON
AIR CHARTER SERVICES."

8. ALTHOUGH IT APPEARS REDUNDANT, DEPARTMENT BELIEVES
LETTER SHOULD BE CONCLUDED BY SENTENCE IDENTICAL TO
THAT IN GULDIMANN'S NOVEMBER 20, 1975 LETTER, I.E.,
"YOUR WRITTEN CONFIRMATION THAT THE ABOVE UNDERSTANDING
IS ACCEPTABLE TO YOU WILL, UPON ITS RECEIPT BY THE SWISS
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FEDERAL AIR OFFICE, PLACE IT INTO EFFECT."

9. ALL PROPOSED ANNEX CHANGES ACCEPTABLE. DEPARTMENT AND
CAB PARTICULARLY PLEASED BY ABC CHANGES WHICH REFLECT
MOVE TOWARD SUBSTANTIAL COMMONALITY OF RULES FOR THIS
TYPE. ALSO ITC AND STUDENT CHARTER RULES CHANGES SHOULD
AID SWISS ENFORCEMENT.

10. EMBASSY'S REPLY LETTER SHOULD BE SAME AS NOVEMBER 24, 1975 LETTER EXCEPT FOR DATES AND SIGNATURES. WHEN EXCHANGE OF LETTERS IS COMPLETE, EMBASSY SHOULD NOTIFY DEPARTMENT TELEGRAPHICALLY AND TRANSMIT ORIGINAL OF GULDIMANN LETTER AND CERTIFIED COPY OF ITS LETTER IN ACCORDANCE WITH 11 FAM.

11. IF SWISS HAVE PROBLEMS WITH PROPOSED CHANGES, EMBASSY SHOULD INFORM DEPARTMENT SOONEST.

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Message Attributes

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